

Act Sept. 3, 1954, c. 1257, 68 Stat. 1177, provided to brigadier general and is now covered by and 8375 of Title 10, Armed

Act Sept. 3, 1954, c. 1257, 68 Stat. 1178, provided for the promotion list by the is now covered by section 10, Armed Forces.

Act Sept. 3, 1954, c. 1257, 68 Stat. 1179, related to Guard, and is now covered by sections 8374, 8377 and 8379 of Armed Forces, and section 307 of National Guard.

Act Sept. 3, 1954, c. 1257, 68 Stat. 1179, provided for first lieutenant in Air National Guard, and is now covered by sections 8305 and 8819 of Armed Forces.

Act Sept. 3, 1954, c. 1257, 68 Stat. 1179, provided for captain, major, and lieutenant in the Air National Guard, covered by section 8368 of Armed Forces.

Act Sept. 3, 1954, c. 1257, 68 Stat. 1180, related to des, and is now covered by and 8846 of Title 10, Armed section 323 of Title 32, Na-

Acts Sept. 3, 1954, c. 1257, 68 Stat. 1181, June 30, § 4(i), 69 Stat. 220, related ages for retention in active is now covered by sections Title 10, Armed Forces.

Acts Sept. 3, 1954, c. 1257, 68 Stat. 1182, June 30, § 4(j), 69 Stat. 220, related on of officers for length of is now covered by sections 651 and 8852 of Title 10, ss.

Act Sept. 3, 1954, c. 1257, 68 Stat. 1183, provided for of excess officers, and is now section 8850 of Title 10, Armed

Act Sept. 3, 1954, c. 1257, 68 Stat. 1183, provided for or transfer of adjutants general adjutants general, and covered by section 8381 of Title Forces.

Act Sept. 3, 1954, c. 1257, 68 Stat. 1183, provided for of excess officers, and is now section 8850 of Title 10, Armed

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and selection boards, and covered by section 780 of Title 14, rd.

1385, Act Sept. 3, 1954, c. 1257, § 605, 68 Stat. 1185, provided ence, and is now covered by t of Title 14, Coast Guard.

1386, Acts Sept. 3, 1954, c. 1257, § 606, 68 Stat. 1185, June 30, § 5(a), 69 Stat. 221, related mates, and is now covered by 2 of Title 14, Coast Guard.

1387, Act Sept. 3, 1954, c. 1257, § 607, 68 Stat. 1186, related to zones, and is now covered by 3 of Title 14, Coast Guard.

1388, Acts Sept. 3, 1954, c. 1257, § 608, 68 Stat. 1186, June 30,

1955, c. 247, § 5(b), 69 Stat. 221, related to date of rank upon promotion, and is now covered by section 784 of Title 14, Coast Guard.

Section 1389, Act Sept. 3, 1954, c. 1257, Title VI, § 609, 68 Stat. 1186, related to minimum points for consideration for promotion, and is now covered by section 785 of Title 14, Coast Guard.

Section 1390, Act Sept. 3, 1954, c. 1257, Title VI, § 610, 68 Stat. 1186, related to qualifications for promotion, and is now covered by section 786 of Title 14, Coast Guard.

Section 1391, Act Sept. 3, 1954, c. 1257, Title VI, § 611, 68 Stat. 1186, related to failure of selection and elimination, and is now covered by section 787 of Title 14, Coast Guard.

Section 1392, Act Sept. 3, 1954, c. 1257, Title VI, § 612, 68 Stat. 1187, provided for removal from promotion list by the President, and is now covered by section 788 of Title 14, Coast Guard.

Section 1393, Act Sept. 3, 1954, c. 1257, Title VI, § 613, 68 Stat. 1187, related to maximum ages for active status, and is

now covered by section 789 of Title 14, Coast Guard.

Section 1394, Act Sept. 3, 1954, c. 1257, Title VI, § 614, 68 Stat. 1187, related to type of promotion, and is now covered by section 790 of Title 14, Coast Guard.

Section 1395, Act Sept. 3, 1954, c. 1257, Title VI, § 615, 68 Stat. 1188, related to promotion of officers serving on active duty, and is now covered by section 791 of Title 14, Coast Guard.

Section 1396, Act Sept. 3, 1954, c. 1257, Title VI, § 616, 68 Stat. 1188, provided for appointment of former Navy and Coast Guard officers, and is now covered by section 792 of Title 14, Coast Guard.

Section 1397, Act Sept. 3, 1954, c. 1257, Title VI, § 617, 68 Stat. 1188, provided for recall of retired officers, and is now covered by section 793 of Title 14, Coast Guard.

Section 1398, Act Sept. 3, 1954, c. 1257, Title VI, § 618, 68 Stat. 1188, authorized the Secretary to promulgate regulations, and is now covered by section 794 of Title 14, Coast Guard.

§ 1399. Promotion of officers selected for promotion prior to July 1, 1955

Codification. Section, Act Sept. 3, 1954, c. 1257, Title VI, § 619, as added June 30, 1955, c. 247, § 5(c), 69 Stat. 221, which

authorized promotion of officers who were selected for promotion prior to July 1, 1955, was omitted from the Code.

CHAPTER 28.—STATUS OF ARMED FORCES PERSONNEL APPOINTED TO SERVICE ACADEMIES [NEW; REPEALED]

§§ 1411-1414. Repealed. Pub.L. 85-861, § 36A, Sept. 2, 1958, 72 Stat. 1570

Sections 1411-1414, Act June 25, 1956, c. 439, §§ 1-4, 70 Stat. 333, related to the status of Armed Forces personnel appointed to service academies, to continuance of enlistment contract or period of obligated service, reversion to enlistment status upon separation from service academy, charge against allowed number of personnel in Armed Forces, and to restriction on counting Academy service towards length of service as officer, and are now covered by sections 516, 3201, 3203, 3214, 5415, 8201, 8203 and 3214 of Title 10, Armed Forces.

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CHAPTER 29.—NATIONAL DEFENSE CONTRACTS [NEW]

Sec.		Sec.
1431.	Authorization; official approval; Congressional action; notification of Committees of certain proposed obligations, resolution of disapproval, continuity of session, computation of period.	(b) Former military and civilian officials employed by defense contractors; Department of Defense employees previously employed by defense contractors.
1432.	Restrictions.	(c) Exceptions.
1433.	Public record; examination of records by Comptroller General; exemptions; exceptional conditions; reports to Congress.	(d) Reports to Congress.
1434.	Reports to Congress; publication.	(e) Termination of employment; filing reports under subsection (b) (1) or (2).
1435.	Effective period.	(f) Recordkeeping; availability of information.
1436.	Reporting requirements.	(g) Penalties.
	(a) Definitions.	(h) Commencement date.

Library references: United States 63 et seq.; War and National Defense 40 et seq.; C.J.S. United States § 85; C.J.S. War and National Defense § 48 et seq.

Code of Federal Regulations

Procedures applicable to contracts, see 41 CFR 1-17.000 et seq.

§ 1431. Authorization; official approval; Congressional action; notification of Committees of certain proposed obligations, resolution of disapproval, continuity of session, computation of period

The President may authorize any department or agency of the Government which exercises functions in connection with the national defense,

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35-45 of Title 41, the Davis-Bacon Act (49 Stat. 1011), as amended [sections 276a to 276d-5 of Title 40], the Copeland Act (48 Stat. 948), as amended, and the Eight-Hour Law (37 Stat. 137), as amended [sections 321 and 322 of Title 40], if otherwise applicable, shall apply to contracts made and performed under the authority of this order.

14. Nothing herein contained shall prejudice anything heretofore done under Executive Order No. 9001 of December 27, 1941, or Executive Order No. 10210 of February 2, 1951 (set out as notes under section 611 of this Appendix to this title), or any amendments or extensions thereof, or the continuance in force of an action heretofore taken under those orders or any amendments or extensions thereof.

15. Nothing herein contained shall prejudice any other authority which the Department of Defense may have to enter into, amend, or modify contracts, and to make advance payments.

PART II—EXTENSION OF PROVISIONS OF PARAGRAPHS 1-14

21. Subject to the limitations and regulations contained in paragraphs 1 to 14, inclusive, hereof, and under any regulations prescribed by him in pursuance of the provisions of paragraph 22 hereof, the head of each of the following-named agencies is authorized to perform or exercise as to his agency, independently of any Secretary referred to in the said paragraphs 1 to 14, all the functions and authority vested by those paragraphs in the Secretaries mentioned therein:

Department of the Treasury
Department of the Interior
Department of Agriculture
Department of Commerce
Department of Transportation
Atomic Energy Commission
General Services Administration
National Aeronautics and Space Administration
Tennessee Valley Authority
Government Printing Office

22. The head of each agency named in paragraph 21 hereof is authorized to prescribe regulations governing the carrying out of the functions and authority vested with respect to his agency by the provisions of paragraph 21 hereof. Such regulations shall, to the extent practicable, be uniform with the regulations prescribed or approved by the Secretary of Defense under the provisions of Part I of this order.

23. Nothing contained herein shall prejudice any other authority which any agency named in paragraph 21 hereof may have to enter into, amend, or modify contracts and to make advance payments.

24. Nothing contained in this Part shall constitute authorization thereunder for the amendment of a contract negotiated under section 302(c) (14) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 394), as amended by section 2(b) of the act of August 28, 1958, 72 Stat. 966 [section 232(c) (14) of Title 41], to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

DWIGHT D. EISENHOWER

of Decisions

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1. Purpose

Former section 611 of Appendix to this title was not passed for the benefit of contractors or for their relief from an unprofitable contract, but solely for the benefit of the nation as a whole, in order to facilitate the prosecution of the war. *Bolinders Co. v. U. S.*, 1957, 153 F.Supp. 381, 139 Ct.Cl. 677, certiorari denied 78 S.Ct. 538, 355 U.S. 953, 2 L.Ed.2d 530.

The purpose of provision of former section 611 of Appendix to this title empowering President to authorize governmental agencies prosecuting the war effort to enter into contracts facilitating prosecution of war was to enable subordinates to the President, either in his capacity as Chief Executive or in his other capacity as Commander in Chief, to contract freely for all supplies and services needed to facilitate prosecution of war. *Dorsey v. Oregon Motor Stages*, 1948, 194 P.2d 967, 183 Or. 494.

2. Law governing

Regardless of state law that might apply to contract warranty, inasmuch as warranty in contract with government was required by executive order, suit for breach of that warranty was controlled by federal law. *U. S. v. Webber, C.A. Del.* 1968, 396 F.2d 381.

Ex.Ord.No.9001, Dec. 27, 1941, 6 F.R. 6787, as amended requiring contract to contain warranty that contractor has not employed any person to secure contract upon an agreement for a contingent commission states a federal rule of public policy, and federal and not state law governs the applicability of the order. *Mitchell v. Flintkote Co.*, C.A.N.Y. 1951, 185 F.2d 1008.

Executive Order requiring contract to contain warranty that contractor has not employed any person to secure contract upon an agreement for a contingent commission states a federal rule of public policy, and federal and not state law governs applicability of the order. *Federal Pacific Elec. Co. v. McAdams*, 1955, 139 N.Y.S.2d 418, 207 Misc. 525.

3. Generally

Granting of relief to a government contractor under former section 611 of Appendix to this title is not a matter of right, and denial of such relief gives rise to no legal or equitable claim and application for relief by government contractor to Air Force Contract Adjustment Board in connection with termination of government contract was not a compliance with articles of contract providing for filing of claims and appeals. *Commonwealth Engineering Co. of Ohio v. U. S.*, 1960, 180 F.Supp. 396, 148 Ct.Cl. 330, certiorari denied 81 S.Ct. 55, 364 U.S. 820, 5 L.Ed.2d 50.

3a. Allowance of claims

Action by responsible government official on claim filed under this chapter relating to national defense contracts is entirely discretionary and the allowance of such claim requires finding by official considering it that such action would facilitate the national defense. *Winder Aircraft Corp. of Fla. v. U. S.*, 1969, 412 F.2d 1270, 188 Ct.Cl. 799.

4. Breach—Contracts

The War Manpower Commission's refusal to furnish its services as an employment agency to employers, who were operating under a construction contract with the United States and who were involved in the labor dispute, was not arbitrary, unreasonable, and illegal, and, therefore, was a sovereign act and not a breach of the implied terms of the contract. *Ottiger v. U. S.*, 1952, 106 F.Supp. 198, 123 Ct.Cl. 23.

In order for a contractor to recover damages against United States for delay in connection with a government contract, plaintiff must establish a breach of contract upon which to predicate a claim for damages, and mere fact that plaintiff has sustained a loss is not enough to enlarge provisions of a written contract and to recover damages. *Enrich v. U. S.*, 1951, 98 F.Supp. 347, 120 Ct.Cl. 100, certiorari denied 72 S.Ct. 625, 342 U.S. 953, 96 L.Ed. 708.

Where a contractor entered into a contract with a government agency in 1943, but notice to proceed was not given until the fall of 1944 after project had been cleared by War Production Board, in view of wartime circumstances, the delay in giving plaintiff notice to proceed with contract was not so unreasonable as to amount to a breach of contract. *Id.*

A motor bus carrier's use of Government owned vehicles to transport passengers between army camp and nearby city was not breach of contract forbidding carrier from using vehicles of third party to carry passengers between camp and city, where Government's insistence that carrier use Government vehicles or stay out of the camp was compulsory though expressed in form of voluntary agreement notwithstanding that contract contained no provision excusing carrier from promise not to use third party's vehicles. *Dorsey v. Oregon Motor Stages*, 1948, 194 P.2d 967, 183 Or. 494.

5. — Warranties

Where partners had made a contingent fee arrangement with contract solicitor in breach of partners' contract with government's assignor and corporation subsequently formed by partners had assumed the contract, performed the work, and was paid by assignor therefor, corporation was deemed to have adopted the contract and it was liable to the United States for breach of warranty. *U. S. v. Webber, D.C.Del.* 1967, 270 F.Supp. 286, affirmed 396 F.2d 381.

Under the facts in a prior district court case where partners secured a sub-contract from the government's prime

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contractor through the services of a contract solicitor in breach of a warranty in the subcontract, the United States as assignor of the prime contractor's rights was entitled to enforce those rights against the partners in absence of a showing that the assignor had released the partners, even though the partners formed a corporation during the performance of the contract, which corporation was found to have assumed the contract. *Id.*

Ex.Ord.No.9001, Dec. 27, 1941, 6 F.R. 6787 requiring war contracts to contain a warranty that contract had not been secured or solicited for a commission by one other than a bona fide commercial or selling agency maintained by the contractor to obtain business and that upon a breach of the warranty the government should have right to annul contracts or deduct the wrongful commission did not declare the contract to be void if the warranty were violated. *Ebeling v. Fred J. Swaine Mfg. Co.*, 1948, 209 S.W.2d 892, 357 Mo. 549.

6. Cancellation of contracts

In determining whether the United States properly terminated for default a contract between the Department of Army and contractor for manufacture and delivery of fire bombs, since telegram advised contractor that "letter follows" and since the acts or omissions of default were not stated in telegram but were set forth in letter, the two documents must be considered together and constituted but a single notice of termination. *U. S. v. Chichester*, C.A.Cal.1963, 312 F.2d 275.

Where contract between Department of the Army and contractor required contractor to make deliveries of fire bombs in specific quantities in each of calendar months specified, and "default" clause authorized government to terminate contract if contractor failed to make delivery within specified time, government could terminate contract without notice upon failure of contractor to meet each month's delivery schedule, in view of fact that parties intended time to be of essence of the delivery schedule. *Id.*

Cancellation of the contract in suit by the contracting officer, on the recommendation of the procurement officer, without any findings of fact by the contracting officer and over the protest of the contractor, who was without fault regarding the delay, did not relieve the Government of liability. *Universal Power Corp. v. U. S.*, 1948, 112 Ct.Cl. 97.

7. Correction of mistakes

Where livestock slaughterer's original subsidy claim contained incorrect slaughter and cost statistics, and slaughterer refused to comply with Reconstruction Finance Corporation's request that slaughterer submit a corrected claim, corporation's refusal to pay subsidy to slaughterer for such month was proper. *Smith v. Floete*, Em.App.1959, 269 F.2d 676.

The exercise of power, given chiefs of technical services by Army Procurement Regulation and Ex.Ord.No.9001, Dec. 27, 1941, 6 F.R. 6787 to enter into supplemental agreements for correction of government contractors' unilateral mistakes, rests with proper officials of procurement agencies, not with courts. *Saligman v. U. S.*, D.C.Pa.1944, 56 F.Supp. 505.

8. Modification of contracts

Court of Claims was powerless to compel granting to contractor, which had contracted with the United States to manufacture for United States napalm fire bombs, relief under Title II of First War Powers Act, former section 611 et seq. of Appendix to this title, which authorizes relief for contractor on finding

that such action will facilitate national defense or prosecution of war where such relief depends entirely on administrative determination that such relief will facilitate national defense. *Evans Reamer & Mach. Co. v. U. S.*, 1967, 386 F.2d 873, 181 Ct.Cl. 539, certiorari denied 88 S.Ct. 1102, 309 U.S. 982, 19 L.Ed.2d 1279.

Where manufacturer entered into a contract with the Navy Department to construct certain units of a ship according to a specific price per pound of units supplied, but after work had started on construction manufacturer found out that the price stipulated in contract was far too low and manufacturer faced immediate prospect of being forced out of business by losing contract, and the Navy Department and manufacturer then entered into conferences and an amended contract was made to include cost of work on a cost basis and manufacturer was paid in full for the work already done and manufacturer proceeded with performance of the contract as modified, manufacturer could not recover on any breaches that might have occurred before the modification of contract. *Merrill-Stevens Dry Dock & Repair Co. v. U. S.*, 1951, 98 F.Supp. 464, 119 Ct.Cl. 310.

Where manufacturer entered into a contract with the Navy Department for the construction of certain units of a ship, but the parties caused contract to be amended and modified to the extent that manufacturer operated under a new contract, even though the causes of action that manufacturer might have had on account of breaches of original contract did not survive the execution, amendment and modification of contract, manufacturer was entitled to recover costs incurred before modification date which were properly allocable to production after that date. *Id.*

Provision of former section 611 of Appendix to this title authorizing President to authorize governmental agencies to amend contracts if such action would facilitate prosecution of war applied only to pending and future contracts, and did not authorize modification of contract under which work had been completed and accepted and final voucher issued prior to passage of such former section 611. *Centaur Const. Co. v. U. S.*, 1947, 69 F.Supp. 217, 107 Ct.Cl. 498, certiorari denied 68 S.Ct. 56, 332 U.S. 757, 92 L.Ed. 343.

9. Performance of contracts—Time for

In action by contractor on war housing project for increased costs because of compelled Saturday work due to Ex.Ord. No.9301, Feb. 9, 1943, 8 F.R. 1825, requiring a 48 hour week, evidence did not establish that plaintiff had not proved it could have completed its contract within the contract time if it had worked only a 40 hour week. *John A. Johnson Contracting Corp. v. U. S.*, 1951, 98 F.Supp. 154, 119 Ct.Cl. 707.

In action by contractor on war housing project for increased costs in performing the contract because of compelled Saturday work due to Ex.Ord. No.9301, Feb. 9, 1943, 8 F.R. 1825, requiring a 48 hour week, evidence did not establish that the government agents granted the contractor extensions of time to which it was not entitled under the contract, and where it was entitled to them, they were required to be added to the original contract period in order to determine whether the contractor could have completed the contract on time if it had worked a 5 day week. *Id.*

10. — Delays

In war housing project contractor's action for excess costs resulting from delay, wherein the government counterclaimed for overpayment, where it appeared that

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contractor had been put to expense, but mostly as result of material shortages linked with conditions and to essential, design orders issued in connection with waging of all-out war; an overpayment, might have a concession made because of trouble and expense to contractor had been subjected, it would, in confused state inclined to leave parties to them. *Barnes v. U. S.*, 1951, 817, 123 Ct.Cl. 101.

Where delay in performance of contract was due to the operation of priority and allocation system by the Government during war, under the provisions of the act, in suit the defendant is liable for loss and damages suffered by contractor, and plaintiff is entitled to recover. *Universal Power Corp. v. U. S.*, 1948, 112 Ct.Cl. 97.

11. Adjustments in price

Where an amendment to a contract was granted under section 611 of Appendix to this title not in order to make contract more productive or to prevent impairment of productive ability, and to national defense, contractor is entitled to any adjustment in price that was granted by the adjustment Board on any theoretical consideration of certain items cost were not taken into account arriving at the adjustment. *U. S. v. 1957 153 F.Supp. 3677, certiorari denied 78 S.Ct. 953, 2 L.Ed.2d 530.*

In determining whether a company which had entered into contracts with the Army was entitled to an equitable adjustment in prices due to unforeseen increases, consideration would be given to other contracts entered into by company and the government performance of contracts. *Cooper Tire & Rubber Co. v. U. S.*, 1951, 98 F.Supp. 844, 138 Ct.Cl. 539.

Denial of relief to the contractor of adjustment of contract price because the government is a matter of government agency charged with adjustment under amendment section 611 of Appendix to this title of such relief gave rise to equitable claim. *Id.*

Where Government contract, for revision in price after delivery of articles contracted for, was for contractor's default before 30% of articles had been accepted, contractor was not entitled to revision in price for articles furnished under supplemental contract revising unit price for articles furnished under terminated portion of original contract without consideration. *Cor America v. U. S.*, 1952, 105 F.2d 123 Ct.Cl. 176.

12. — Reductions

Contracting officer for United States had authority under former section 611 of Appendix to this title and No.9001, Dec. 27, 1941, 6 F.R. 6787, amended, issued pursuant to the act, to agree to reduction in price to be paid for prisoner of war labor. *U. S. v. Packing Ass'n*, C.A.Fla.1952, 197, certiorari denied 73 S.Ct. 106, 865, 97 L.Ed. 670.

13. Agents—Contractors as go-

A contract to design and construct a cost-plus-a-fixed-fee basis for a power plant for the United States property owned by it made no independent contractors rather than government agents. *Rosecrans v.*

that such action will facilitate national defense or prosecution of war where such relief depends entirely on administrative determination that such relief will facilitate national defense. *Evaus Roamer & Mach. Co. v. U. S.*, 1967, 386 F.2d 873, 181 Ct.Cl. 539, certiorari denied 88 S.Ct. 1102, 309 U.S. 982, 19 L.Ed.2d 1279.

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Where manufacturer entered into a contract with the Navy Department for the construction of certain units of a ship, but the parties caused contract to be amended and modified to the extent that manufacturer operated under a new contract, even though the causes of action that manufacturer might have had on account of breaches of original contract did not survive the execution, amendment and modification of contract, manufacturer was entitled to recover costs incurred before modification date which were properly allocable to production after that date. *Id.*

Provision of former section 611 of Appendix to this title authorizing President to authorize governmental agencies to amend contracts if such action would facilitate prosecution of war applied only to pending and future contracts, and did not authorize modification of contract under which work had been completed and accepted and final voucher issued prior to passage of such former section 611. *Centaur Const. Co. v. U. S.*, 1947, 69 F.Supp. 217, 107 Ct.Cl. 408, certiorari denied 68 S.Ct. 56, 332 U.S. 757, 92 L.Ed. 343.

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10. — Delays In war housing project contractor's action for excess costs resulting from delay wherein the government counterclaimed for overpayment, where it appeared that

contractor had been put to considerable expense, but mostly as result of labor and material shortages linked to wartime conditions and to essential, general, sovereign orders issued in connection with waging of all-out war; and that claimed overpayment, might have been partially a concession made because of extra trouble and expense to which contractor had been subjected. Court of Claims would, in confused state of record, be inclined to leave parties where it found them. *Barnes v. U. S.*, 1952, 105 F.Supp. 817, 123 Ct.Cl. 101.

Where delay in performance of contract was due to the operation of the priority and allocation system instituted by the Government during the war period, under the provisions of the contract in suit the defendant is liable for the loss and damages suffered by the contractor, and plaintiff is entitled to recover. *Universal Power Corp. v. U. S.*, 1948, 112 Ct.Cl. 97.

11. Adjustments in price

Where an amendment to contractor's contract was granted under former section 611 of Appendix to this title not in order to make contractor whole, but to prevent impairment of contractor's productive ability, and to facilitate the national defense, contractor was not entitled to any adjustment in price other than that granted by the Contract Adjustment Board on any theory that consideration of certain items of increased cost were not taken into account in arriving at the adjustment. *Polindere Co. v. U. S.*, 1957, 153 F.Supp. 381, 139 Ct.Cl. 677, certiorari denied 78 S.Ct. 538, 355 U.S. 953, 2 L.Ed.2d 530.

In determining whether a rubber company which had entered into certain contracts with the Army was entitled to any equitable adjustment in contract prices due to unforeseen increases in costs, consideration would be given to other contracts entered into between the company and the government during performance of contracts in question. *Cooper Tire & Rubber Co. v. U. S.*, 1957, 150 F.Supp. 240, 138 Ct.Cl. 339.

Denial of relief to the contractor in the way of adjustment of contract price with the government is a matter of right with government agency charged with such adjustment under amendment to former section 611 of Appendix to this title, and denial of such relief gave rise to no legal or equitable claim. *Id.*

Where Government contract, providing for revision in price after delivery of 30% of articles contracted for, was terminated for contractor's default before delivery of 30% of articles had been accepted, contractor was not entitled to revision, and supplemental contract revising upward unit price for articles furnished under unperfected portion of original contract was without consideration. *Coat Corp. of America v. U. S.*, 1952, 105 F.Supp. 832, 123 Ct.Cl. 178.

12. — Reductions

Contracting officer for United States had authority under former section 611 of Appendix to this title and Ex.Ord. No.9001, Dec. 27, 1941, 6 F.R. 6787, as amended, issued pursuant thereto, to agree to reduction in price to be paid for prisoner of war labor. *U. S. v. Adams Packing Ass'n, C.A.Fla.1952*, 197 F.2d 33, certiorari denied 73 S.Ct. 106, 344 U.S. 865, 97 L.Ed. 670.

13. Agents—Contractors as government

A contract to design and construct on a cost-plus-a-fixed-fee basis an ordnance plant for the United States on property owned by it made contractors independent contractors rather than government agents. *Rosecrans v. William*

S. Lozier, Inc., C.C.A.Mo.1944, 142 F.2d 118.

Tentative negotiations on the contractor's request for extra-contractual relief under this chapter would not serve to toll the statute of limitations applicable to claims under the contract. *Henry Products Co. v. U. S.*, 1967, 180 Ct.Cl. 928.

14. — Employment

Federal Reserve Bank was authorized as fiscal agent of the United States to guarantee payment to banks, which were financing World War II housing project, of 90% of any deficiency by builders in view of executive order, promulgated under former section 611 of Appendix to this title providing that any Federal Reserve Bank is authorized to act as agent of the War Department which grant of authority was subsequently ratified by statute. *Hart v. Federal Reserve Bank of Atlanta, C.A.Tenn.1967*, 379 F.2d 981, certiorari denied 88 S.Ct. 849, 390 U.S. 924, 19 L.Ed.2d 983.

An agent hired to have paint manufacturer's name added to government's list of possible contractors aided company to "secure" contract for sale of camouflage paint to government within Ex.Ord.No. 9001, Dec. 27, 1941, 6 F.R. 6787, as amended requiring contract to contain warranty that contractor has not employed any person to "secure" contract upon an agreement for a contingent commission. *Mitchell v. Flintkote Co., C.A.N.Y.1951*, 185 F.2d 1008.

Ex.Ord.No.9001, Dec. 27, 1941, 6 F.R. 6787, as amended, requiring contractor to warrant that it had employed no contract solicitor, established federal policy having force of law, as to which views of state tribunals could not be regarded as controlling. *Browne v. R. & R. Engineering Co., D.C.Del.1953*, 164 F.Supp. 315, reversed on other grounds 264 F.2d 219.

Ex.Ord.No.9001, Dec. 27, 1941, 6 F.R. 6787, as amended did not prohibit the employment of agents to procure war contracts on a percentage commission basis but merely provided that the contractor should contain a warranty that the contractor would not employ other than a bona fide, established, commercial or selling agency to obtain the contracts. *Ebeling v. Fred J. Swaine Mfg. Co., Mo.*, 1948, 200 S.W.2d 892, 357 Mo. 549.

15. Commissions

The rationale underlying Ex.Ord.No.9001, Dec. 27, 1941, 6 F.R. 6787, as amended, requiring contractor receiving government contract to warrant that he has not employed any person to solicit or secure the contract upon any agreement for a commission is to prevent improper conduct in obtaining government contracts and to prevent the government from being overcharged by addition of commissions or contingent fees to the contract price. *U. S. v. Webber, D.C.Del.1967*, 270 F.Supp. 286, affirmed 396 F.2d 381.

A contract between citizens of New York state for a commission for negotiating lease of property to the United States government was valid under federal rule of public policy, in view of fact that services were of a legitimate character and nothing sinister or improper was contemplated. *Leahy v. Brooklyn Waterfront Terminal Corp.*, 1947, 69 N.Y. S.2d 598, 272 App.Div. 781.

Contract of defendant to pay brokerage commission for plaintiff's services in obtaining war contract was not invalidated or rendered illegal or against "public policy" by Ex.Ord.No.9001, Dec. 27, 1941, 6 F.R. 6787 declaring that every contract entered into pursuant thereto should contain warranty that contractor had not employed any person to solicit or procure contract on agreement for

50 § 1431 WAR AND NATIONAL DEFENSE

Note 36

36. Review

This chapter affords an ex gratia remedy to persons providing goods or services and does not preclude subsequent judicial relief. *Embassy Moving & Storage Co. v. U. S.*, 1970, 424 F.2d 602, 191 Ct.Cl. 537.

On appeal from judgment dismissing action for sums due plaintiffs for materials and labor furnished subcontractor for performance of work contemplated by defendant's defense contract with Air Force Department, defendant was entitled to rely on provision of former section 611 of Appendix to this title, authorizing President to authorize government departments to enter into defense contracts without regard to statutory requirements, and President's proclamation of Ex.Ord. No.10210, Feb. 2, 1951, 16 F.R. 1049, authorizing Defense Department to enter into such contracts without requiring payment or performance bonds, in support of judgment, though District Court did not rely on said section. *Gallaher & Speck, Inc. v. Ford Motor Co.*, C.A.III. 1955, 226 F.2d 723.

§ 1432. Restrictions

Nothing in this chapter shall be construed to constitute authorization hereunder for—

- (a) the use of the cost-plus-a-percentage-of-cost system of contracting;
- (b) any contract in violation of existing law relating to limitation of profits;
- (c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;
- (d) the waiver of any bid, payment, performance, or other bond required by law;
- (e) the amendment of a contract negotiated under section 2304(a) (15) of Title 10 or under section 252(c) (13) of Title 41 to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or
- (f) the formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures. Pub.L. 85-804, § 2, Aug. 28, 1958, 72 Stat. 972.

References in Text. Section 252(c) (13) of Title 41, referred to in subd. (e), was renumbered section 252(e) (14) of Title 41 by Pub.L. 85-800, § 2(b), Aug. 28, 1958, 72 Stat. 966.

Index to Notes

Generally 3
Bonds 1
Costs plus fixed fee contracts 2

1. Bonds

The provision of former section 611 of Appendix to this title authorizing President to authorize government departments to enter into defense contracts without regard to requirements of statutes, including section 270a of Title 40, requiring bonds for government contracts, did not restrict President's authority to exemption of contractors from giving performance bonds only, so that President's Ex.Ord.No.10210 Feb. 2, 1951, 16 F.R. 1049, authorizing Defense Department to enter into contracts without requiring either payment or performance bonds, was not beyond his authority under former section 611 as to provision for waiver of payment bonds. *Gallaher & Speck, Inc. v. Ford Motor Co.*, C.A.III.1955, 226 F.2d 723.

Under former section 611 of Appendix to this title, action of the President, or of agencies to whom he had delegated powers granted thereunder, was not subject to review by the courts, and conferred no rights on contractors. *Bolinders Co. v. U. S.*, 1957, 153 F.Supp. 381, 139 Ct.Cl. 677, certiorari denied 78 S.Ct. 538, 355 U.S. 953, 2 L.Ed.2d 530.

Where former section 611f Appendix to this title authorized amendment of government contracts to facilitate prosecution of war, peace treaty had not been signed, United States troops were in occupation of enemy countries and authorized representative of Treasury Department determined in good faith that amendment to contracts with fuel oil distributor permitting higher prices following lifting of controls would facilitate prosecution of World War II, Court of Claims was without power to review the determination and contractor was entitled to payment under contracts. *Waller v. U. S.*, 1948, 78 F.Supp. 816, 114 Ct.Cl. 640.

The President's proclamation of Ex.Ord.No.10210, Feb. 2, 1951, 16 F.R. 1049, authorizing Defense Department to enter into defense contracts without regard to statutory requirements and declaring that payment performance or other bonds need not be required, as authorized by former section 611 of Appendix to this title repealed so far as statutory force was concerned, all provisions of section 270a et seq. of Title 40, requiring defense contractors to give performance and payment bonds, id.

2. Cost plus fixed fee contracts

Where \$800,120 contract to rebuild tent frames into huts at Fort Sill Military Reservation was designated an advertised lump-sum contract based on unit prices, under former section 611 of Appendix to this title and Ex.Ord.No.9901, Tit. 2, par. 6, Dec. 27, 1941, 6 F.R. 6787 prohibiting a so-called cost plus a fixed fee type of contract, the contract was not a "cost plus a fixed fee contract" so as to relieve contractors of Oklahoma use taxation with respect to materials used in the work, notwithstanding that contractors had been notified that contract would be renegotiated under the Renegotiation Act, section 1191 of Appendix to this title. *Bowers v. Oklahoma Tax Commission*, D.C.Orl.1943, 51 F.Supp. 632.

3. Generally

It is the duty of a cost-plus contract with cy to keep adequate

§ 1433. Public

eral; exceptions: (a) All actions in matter of public record when deemed by him (b) All contracts authority contained in the Comptroller General representatives shall ment, have access to books, documents, and subcontractors engaged related to such contract described by the President with foreign head determines, with United States or his d of the United States. eral of the United States such clause—

(1) where the or agency thereof from making its examination; an (2) where the the price and av States sources, the omission of the c If the clause is omitted ten report shall be furnished 28, 1958, 72 Stat. 97 Stat. 851.

1966 Amendment. Subsections 39-607 provided for exemption of contracts with foreign countries the requirement for an records clause, such determination reported to Congress.

Foreign Contractors. Defense, Army, Navy, or Air designees, to determine, providing the authority provided in this section by exempt certain contractors from the requirement of records examination-of-records clause have been reasonable efforts have been as required by par. 11 of Ord.No.10789, and that all

§ 1434. Reports to

(a) Every department shall, by March 15 taken by that department With respect to action United States in excess

- (1) name the contract
- (2) state the amount
- (3) describe the work
- (4) state further

With respect to (1), prescribed by the President disclosure of which would

NATIONAL DEFENSE

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Where former section 611 of Appendix to this title authorized amendment of government contracts to facilitate prosecution of war, peace treaty had not been signed. United States troops were in occupation of enemy countries and authorized representative of Treasury Department determined in good faith that amendment to contracts with fuel oil distributor permitting higher prices following lifting of controls would facilitate prosecution of World War II. Court of Claims was without power to review the determination and contractor was entitled to payment under contracts. *Waller v. U. S.*, 1948, 78 F.Supp. 816, 114 Ct.Cl. 640.

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amount higher than the lowest re-
bidder; or

n informal commitment, unless it is
commitment was made it was imprac-
ment procedures. Pub.L. 85-804, § 2.

b) The President's proclamation of Ex-
Ord.No.10210, Feb. 2, 1951, 16 F.R. 1049,
authorizing Defense Department to enter
into defense contracts without regard to
statutory requirements and declaring that
payment performance or other bonds need
not be required, as authorized by former
section 611 of Appendix to this title re-
pealed so far as statutory force was con-
cerned, all provisions of section 270a et
seq. of Title 40, requiring defense con-
tractors to give performance and pay-
ment bonds. Id.

of 2. Cost plus fixed fee contracts
ng Where \$900,120 contract to rebuild tent
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n- 2, par. 6, Dec. 27, 1941, 6 F.R. 6787 pro-
v- hibiting a so-called cost plus a fixed fee
s- type of contract, the contract was not a
16 "cost plus a fixed fee contract" so as to
rt- relieve contractors of Oklahoma use tax-
re- ation with respect to materials used in
ce the work, notwithstanding that contrac-
m- tors had been notified that contract
n- would be renegotiated under the Renego-
per tiation Act, section 1191 of Appendix to
LA this title. *Bowers v. Oklahoma Tax Com-
mission*, D.C.Okla.1943, 51 F.Supp. 652.

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3. Generally. It is the duty of a contractor under a cost-plus contract with government agency to keep adequate records to justify actual costs reported, and to keep documents to substantiate its claims for reimbursements. *Sherwood Distilling Co. v. Ryan*, 8m.App.1951, 100 F.2d 314.

§ 1433. Public record; examination of records by Comptroller General; exemptions: exceptional conditions; reports to Congress

(a) All actions under the authority of this chapter shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this chapter shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts. Under regulations to be prescribed by the President, however, such clause may be omitted from contracts with foreign contractors or foreign subcontractors if the agency head determines, with the concurrence of the Comptroller General of the United States or his designee, that the omission will serve the best interests of the United States. However, the concurrence of the Comptroller General of the United States or his designee is not required for the omission of such clause—

(1) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination; and

(2) where the agency head determines, after taking into account the price and availability of the property or services from United States sources, that the public interest would be best served by the omission of the clause.

If the clause is omitted based on a determination under clause (2), a written report shall be furnished to the Congress. Pub.L. 85-804, § 3, Aug. 28, 1958, 72 Stat. 972, amended Pub.L. 89-607, § 3, Sept. 27, 1966, 80 Stat. 851.

1966 Amendment. Subsec. (b). Pub.L. 89-607 provided for exemption of certain contracts with foreign contractors from the requirement for an examination-of-records clause, such determination to be reported to Congress.

Foreign Contractors. Secretaries of Defense, Army, Navy, or Air Force, or their designees, to determine, prior to exercising the authority provided in the amendment of this section by Pub.L. 89-607 to exempt certain contracts with foreign contractors from the requirement of an examination-of-records clause, that all reasonable efforts have been made to include such examination-of-records clause, as required by par. 11 of Part I of Ex. Ord.No.10780, and that alternate sources

of supply are not reasonably available, see par. 11 of Part I of Ex.Ord.No. 10780, Nov. 14, 1958, 23 F.R. 8897, as amended, set out as a note under section 1431 of this title.

Exemption of Functions. Functions with respect to purchases authorized to be made outside the limits of the United States or the District of Columbia under the Foreign Assistance Act of 1961, as amended, as exempt, see Ex.Ord.No.11223, May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

Legislative History. For legislative history and purpose of Pub.L. 89-607, see 1966 U.S.Code Cong. and Adm.News, p. 3063.

§ 1434. Reports to Congress; publication

(a) Every department and agency acting under authority of this chapter shall, by March 15 of each year, report to Congress all such actions taken by that department or agency during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of \$50,000, the report shall—

- (1) name the contractor;
- (2) state the actual cost or estimated potential cost involved;
- (3) describe the property or services involved; and
- (4) state further the circumstances justifying the action taken.

With respect to (1), (2), (3), and (4), above, and under regulations prescribed by the President, there may be omitted any information the disclosure of which would be detrimental to the national security.

50 § 1434 WAR AND NATIONAL DEFENSE

(b) The Clerk of the House and the Secretary of the Senate shall cause to be published in the Congressional Record all reports submitted pursuant to this section. Pub.L. 85-804, § 4, Aug. 28, 1958, 72 Stat. 972.

§ 1435. Effective period

This chapter shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate. Pub.L. 85-804, § 5, Aug. 28, 1958, 72 Stat. 973.

§ 1436. Reporting requirements—Definitions

(a) As used in this section—

(1) The term "former military officer" means a former or retired commissioned officer of the Armed Forces of the United States who—

(A) served on active duty in the grade of major (or equivalent) or above, and

(B) served on active duty for a period of ten years or more.

(2) The term "former civilian employee" means any former civilian officer or employee of the Department of Defense, including consultants or part-time employees, whose salary rate at any time during the three-year period immediately preceding the termination of his last employment with the Department of Defense was equal to or greater than the minimum salary rate at such time for positions in grade GS-13.

(3) The term "defense contractor" means any individual, firm, corporation, partnership, association, or other legal entity, which provides services and materials to the Department of Defense under a contract directly with the Department of Defense.

(4) The term "services and materials" means either services or materials or services and materials and includes construction.

(5) The term "Department of Defense" means all elements of the Department of Defense and the military departments.

(6) The term "contracts awarded" means contracts awarded by negotiation and includes the net amount of modifications to, and the exercise of options under, such contracts. It excludes all transactions amounting to less than \$10,000 each.

(7) The term "fiscal year" means a year beginning on 1 July and ending on 30 June of the next succeeding year.

Former military and civilian officials employed by defense contractors; Department of Defense employees previously employed by defense contractors

(b) Under regulations to be prescribed by the Secretary of Defense:

(1) Any former military officer or former civilian employee who during any fiscal year,

(A) was employed by or served as a consultant or otherwise to a defense contractor for any period of time,

(B) represented any defense contractor at any hearing, trial, appeal, or other action in which the United States was a party and which involved services and materials provided or to be provided to the Department of Defense by such contractor, or

(C) represented any such contractor in any transaction with the Department of Defense involving services or materials provided or to be provided by such contractor to the Department of Defense,

shall file with the Secretary of Defense, in such form and manner as the Secretary may prescribe, not later than November 15 of the next succeeding fiscal year, a report containing the following information:

(1) His name and address.

(2) The name and address of the defense contractor by whom he was employed or whom he served as a consultant or otherwise.

(3) The title of the contractor.

(4) A brief description of the work done by him for the contractor.

(5) His minimum salary rate while on active duty, in case may be.

(6) A brief description of the work done by him while on active duty, in case may be.

(7) The date of his release from active duty, in case may be.

(8) Such other information as the Secretary of Defense may require.

(9) The date of his release from active duty, in case may be.

(10) The date of his release from active duty, in case may be.

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(12) The date of his release from active duty, in case may be.

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employed by defense contractors; previously employed by defense contractors

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fense, in such form and manner as to be filed not later than November 15 of the year in which the information containing the following information

of the defense contractor by whom he was employed as a consultant or otherwise.

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(3) The title of the position held by him with the defense contractor.

(4) A brief description of his duties and the work performed by him for the defense contractor.

(5) His military grade while on active duty or his gross salary rate while employed by the Department of Defense, as the case may be.

(6) A brief description of his duties and the work performed by him while on active duty or while employed by the Department of Defense during the three-year period immediately preceding his release from active duty or the termination of his civilian employment, as the case may be.

(7) The date on which he was released from active duty or the termination of his civilian employment with the Department of Defense, as the case may be, and the date on which his employment, as an employee, consultant, or otherwise with the defense contractor began and, if no longer employed by such defense contractor, the date on which such employment with such defense contractor terminated.

(8) Such other pertinent information as the Secretary of Defense may require.

(2) Any employee of the Department of Defense, including consultants or part-time employees, who was previously employed by or served as a consultant or otherwise to a defense contractor in any fiscal year, and whose salary rate in the Department of Defense is equal to or greater than the minimum salary rate for positions in grade GS-13, shall file with the Secretary of Defense, in such form and manner and at such times as the Secretary may prescribe, a report containing the following information:

(1) His name and address.

(2) The title of his position with the Department of Defense.

(3) A brief description of his duties with the Department of Defense.

(4) The name and address of the defense contractor by whom he was employed or whom he served as a consultant or otherwise.

(5) The title of his position with such defense contractor.

(6) A brief description of his duties and the work performed by him for the defense contractor.

(7) The date on which his employment as a consultant or otherwise with such contractor terminated and the date on which his employment as a consultant or otherwise with the Department of Defense began thereafter.

(8) Such other pertinent information as the Secretary of Defense may require.

Exceptions

(c) (1) No former military officer or former civilian employee shall be required to file a report under this section for any fiscal year in which he was employed by or served as a consultant or otherwise to a defense contractor if the total amount of contracts awarded by the Department of Defense to such contractor during such year was less than \$10,000,000; and no employee of the Department of Defense shall be required to file a report under this section for any fiscal year in which he was employed by or served as a consultant or otherwise to a defense contractor if the total amount of contracts awarded to such contractor by the Department of Defense during such year was less than \$10,000,000.

(2) No former military officer or former civilian employee shall be required to file a report under this section for any fiscal year on account of active duty performed or employment with or services performed for the Department of Defense if such active duty or employment was terminated three years or more prior to the beginning of such fiscal year; and

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no employee of the Department of Defense shall be required to file a report under this section for any fiscal year on account of employment with or services performed for a defense contractor if such employment was terminated or such services were performed three years or more prior to the effective date of his employment with the Department of Defense.

(3) No former military officer or former civilian employee shall be required to file a report under this section for any fiscal year during which he was employed by or served as a consultant or otherwise to a defense contractor at a salary rate of less than \$15,000 per year; and no employee of the Department of Defense, including consultants or part-time employees, shall be required to file a report under this section for any fiscal year during which he was employed by or served as a consultant or otherwise to a defense contractor at a salary rate of less than \$15,000 per year.

Reports to Congress

(d) The Secretary of Defense shall, not later than December 31 of each year, file with the President of the Senate and the Speaker of the House of Representatives a report containing a list of the names of persons who have filed reports with him for the preceding fiscal year pursuant to subsections (b) (1) and (b) (2) of this section. The Secretary shall include after each name so much information as he deems appropriate and shall list the names of such persons under the defense contractor for whom they worked or for whom they performed services.

Termination of employment; filing reports under subsection (b) (1) or (2)

(e) Any former military officer or former civilian employee whose employment with or services for a defense contractor terminated during any fiscal year shall be required to file a report pursuant to subsection (b) (1) of this section for such year if he would otherwise be required to file under such subsection; and any person whose employment with or services for the Department of Defense terminated during any fiscal year shall be required to file a report pursuant to subsection (b) (2) of this section for such year if he would otherwise be required to file under such subsection.

Recordkeeping; availability of information

(f) The Secretary shall maintain a file containing the information filed with him pursuant to subsections (b) (1) and (b) (2) of this section and such file shall be open for public inspection at all times during the regular workday.

Penalties

(g) Any person who fails to comply with the filing requirements of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by not more than six months in prison or a fine of not more than \$1,000, or both.

Commencement date

(h) No person shall be required to file a report pursuant to this section for any fiscal year prior to the fiscal year 1971.
Pub.L. 91-121, Title IV, § 410, Nov. 19, 1969, 83 Stat. 210.

Cross References

National space program, reporting requirements, see section 2402 of Title 42, The Public Health and Welfare.

CHAPTER 30.—

SUBCHAPTER I.— NATION TO

- Sec. 1451. State enactment of legislation.
- 1452. Balloting procedure.
- 1453. Statistical data.
- 1454. Personnel residing in stations; acquisition of residence for voting.

SUBCHAPTER II.— ILITIES OF F GOVERNMENT

- 1461. Presidential design and facilitate act.
- 1462. Current absentee tion.

Absentee voting, see CFR

SUBCHAPT

§ 1451. State enac

The Congress expressed several States take, enable every person in the place of his voting special, or general election is otherwise eligible to

(1) Members of

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(2) Members of

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(3) Citizens of

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Aug. 9, 1955, c. 656, T
Pub.L. 90-343, § 1, 82

1968 Amendment. Pub.L. 90-343, § 1, 82, amended into par. (3) the former pars. (3) and (4) and consolidated par. (3), substituted which served to extend the tions to the states as to registration so as to include the United States temporarily outside the territorial limits of States and the District and their spouses and dependents with or accompanying former provisions of par served to include civilian the United States in all cases outside the United States District of Columbia and dependents when residing accompanying them, whether subject to the civil service Classification Act of 1949, and provisions of Congress, and provisions of (4) which served to include religious groups and welfare